

REMARKS

Claims 27 and 28 are canceled without prejudice, and therefore claims 12 to 26 are pending in the present application.

To better conform the claims to the Rules, claims 12, 14 to 21, and 23 to 26 have been revised as to format.

In view of the following, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Claims 12, 16 to 23, and 26 to 28 were rejected under 35 USC § 102(b) as anticipated by Kodaka et al., U.S. Patent App. Pub. No. 2001/0018641.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art.” (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

Claims 27 and 28 are canceled without prejudice.

Claim 12 is to a “method for determining an accident risk of a first object with at least one second object” including the features of “determining the accident risk as a function of a collision probability and a hazard probability of the at least one second object in a predefined region” and the feature of “determining the collision probability and the hazard probability as a function of motions of the first and at least one second object.”

The Kodaka reference does not identically disclose (or even suggest) the feature of determining the accident risk *as a function of a collision probability and a hazard probability* of the at least one second object in a predefined region. The Kodaka reference does not identically disclose (or even suggest) a collision probability and a hazard probability. Therefore the Kodaka reference cannot identically disclose (or even suggest) the feature of determining the accident risk as a function of a collision probability and a hazard probability, as provided for in the context of the claimed subject matter.

Accordingly, claim 12 is allowable, as are its dependent claims 16 to 23 and 26.

Claims 13 to 15, 24, and 25 were rejected under 35 U.S.C. § 103(a) as unpatentable over Kodaka et al., U.S. Patent App. Pub. No. 2001/0018641, in view of Miller et al., U.S. Patent App. Pub. No. 2003/0139881.

In rejecting a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claims 13 to 15, 24, and 25 depend from claim 12, and are therefore allowable for the same reasons as claim 12, since the secondary references do not cure – and are not asserted to cure – the critical deficiencies of the primary reference.

In sum, claims 12 to 26 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,

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